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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,385

06/30/2006

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IMPEL.71975

6082

27629 7590 05/02/2011
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ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

05/02/2011

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THORSTEN SIESS and JOSEF PENNERS

Appeal 2009-015015
Application 10/549,385
Technology Center 3700

Before WILLIAM F. PATE, III, JOHN C. KERINS, and
STEFAN STAICOVICI, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Thorsten Siess and Josef Penners (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision to finally reject under 35 U.S.C. § 103(a) claims 1-8 as unpatentable over Fischell (EP 0 596 172 A2, published May 11, 1994) and Siess (US 2004/0044266 A1, published Mar. 4, 2004). We have jurisdiction over this appeal under 35 U.S.C. § 6.

THE INVENTION

The Appellants' invention relates to an introduction device for introducing an object into a vessel of a body, including a tubular channel 15 and a dilator 11 carrying the channel. Specification 1, ll. 3-5 and figs. 1 and 2.

Claim 1, the sole independent claim, is representative of the claimed invention and reads as follows:

1. An introduction device for introducing an object into a vessel of a body, comprising:

a tubular channel and a dilator carrying the channel, wherein the dilator comprises a conical tip portion and is adapted to be retracted from the channel, wherein the channel has a wall thickness not larger than 0.06 mm and is formed exclusively of a hard plastic material.

SUMMARY OF DECISION

We REVERSE.

OPINION

Independent claim 1 recites an introduction device that includes a tubular channel in combination with a dilator, wherein the dilator is “adapted to be retracted from the channel.” App. Br., Claims Appendix. The Examiner has identified the claimed dilator as helical coil 12 of Fischell and the claimed tubular channel as plastic covering 20 of Fischell. Ans. 3. *See also* Fischell p. 2, ll. 52-53 and fig. 1. Furthermore, the Examiner takes the position that the recitation “adapted to be retracted from the channel” is a functional limitation, which is satisfied by the device of Fischell, because helical coil 12 (dilator) of Fischell can be adapted to be retracted from plastic covering 20 (channel) of Fischell before assembly of the introduction device. Ans. 5. More specifically, the Examiner opines that helical coil 12 (dilator) is capable of being retracted from the plastic covering 20 (tubular channel) because helical coil 12 (dilator) can slide through plastic covering 20 (channel) before heat shrinking plastic cover 20 onto helical coil 12 (dilator). *Id.* We disagree with the Examiner’s position for the following reasons.

First, we note that in the introduction device of Fischell, plastic covering 20 (tubular channel) is shrunk fit or molded/extruded over helical coil 12 (dilator) so as to prevent kinking of the introduction device. Fischell, p. 2, ll. 16-22 and p. 3, ll. 27-29. Hence, helical coil 12 of Fischell cannot be retracted from plastic covering 20 after shrink fitting or molding /extruding of plastic covering 20 over helical coil 12.

Second, although we appreciate that helical coil 12 can be retracted from plastic covering 20 prior to heat shrinking or molding/extruding plastic covering 20 over helical coil 12, as the Examiner opines, we note that in such case plastic covering 20 would not be reinforced by helical coil 12 and

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the introduction device of Fischell would not be able to function without kinking as intended by Fischell's device. Moreover, we agree with Appellants that because of the thinner wall thickness of plastic covering 20, the introduction device of Fischell where helical coil 12 is not bound to plastic covering 20 would not be able to allow introduction of an object into a vessel of a body because the wall of plastic covering 20 would collapse. *See Reply Br. 2.* In other words, the device of Fischell in which plastic covering 20 does not fit tightly over helical coil 12 does not constitute "[a]n introduction device for introducing an object into a vessel of a body," as called for by claim 1.

As such, we do not find that helical coil 12 of Fischell satisfies the limitation of a dilator "adapted to be retracted from the channel," as required by independent claim 1.

The addition of Siess does not remedy the deficiencies of Fischell as described above. Therefore, for the foregoing reasons, we cannot sustain the rejection of claims 1-8 under 35 U.S.C. § 103 (a) as unpatentable over Fischell and Siess. *See In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988).

DECISION

The decision of the Examiner to reject claims 1-8 is reversed.

REVERSED

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